HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 7126 OF 2007

Between:

Sri Sainagar Plot Owners Welfare Association,
Kondapalli rep. by its General Secretary,
Mohd. Abdul Khaleel, Kondapalli,
Ibrahimpatnam Mandal, Krishna District

… Petitioner

And

Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Youth Advancement, Tourism and Culture
Department, Hyderabad & others

… Respondents

:: O R D E R ::

Counsel for the petitioner : Smt. M. Kavitha

09.04.2007

Per G.S. Singhvi, CJ

This is a petition for quashing G.O.Ms.No.25, dated 30-4-2004 (published in the Andhra Pradesh Gazette dated 20-5-2004) vide which the Government of Andhra Pradesh, Department of Youth Advancement, Tourism and Culture invited objections under Rule 28 of the Andhra Pradesh Ancient and Historical Monuments and Archeological Sites and Remains Rules, 1960 (for short, 'the Rules') against the proposed declaration of 200 metres near or adjoining Kondapalli Fort as prohibited and regulated area for the purpose of mining operations and constructions.

The petitioner is a society registered under the Andhra Pradesh

Societies Registration Act, 2001. Those who own plots in Layout Numbers 59/81, 43/84, 9/93 and 42/84 of Sri Sainagar, Kondapalli Village, Ibrahimpatnam Mandal, Krishna District are its members. The petitioner has questioned the validity of the impugned notification mainly on the ground of violation of the provisions contained in Section 4 (1) of the Andhra Pradesh Ancient and Historical Monuments and Archeological Sites and Remains Act, 1960 and Rules 28 (1) and (2) and 47 (1) of the Rules.

Smt.M. Kavitha, learned counsel for the petitioner referred to G.O.Ms.No.385, M.A., dated 28-9-1990 issued by the State Government for approval of the draft variation in the Master Plan for Vijayawada, Guntur and Tenali Urban Development Authority (for short, 'the Authority'), orders dated 5-2-2004 and 13-4-2004 passed by the Vice-Chairman of the Authority for cancellation of the sanctioned layouts and caution notices/board (Exs.P.10A to P.10C) issued/affixed by the Department of Archeology and Museums, Andhra Pradesh and the authority on the land comprised in Revenue Survey No.444/2 and argued that the impugned notification is liable to be quashed because the so-called opportunity given to the interested persons to file objections is farcical. She emphasised that layouts sanctioned by the Authority have been cancelled without giving notice and opportunity of hearing to the members of the petitioner and, therefore, there is no likelihood of entertaining of the objections against the proposed restriction on the construction activities up to a distance of 200 metres from Kondapalli Fort.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to agree with her. Rather, we are convinced that the writ petition is liable to be dismissed on the ground that the same is premature and also on the ground that the petitioner has not questioned the action initiated by the Department of Archeology and Museums for restricting construction activities near Kondapalli Fort.

The certificate of registration issued by the Registrar of Cooperative Societies, Vijayawada shows that the petitioner was registered on 27-8-2004 i.e. more than three months after publication of G.O.Ms.No.25, dated 30-4-2004. Therefore, there was no occasion for the petitioner to file objections in the context of G.O.Ms.No.25, dated 30-4-2004. It is not even the pleaded case of the petitioner that any objection was filed on its behalf against the proposed restriction on the construction activities up to a distance of 200 metres from Kondapalli Fort. Some members of the petitioner did submit objections, copies of which have been annexed with the writ petition (pages 41 to 50), but no material has been placed on record to show that their objections have been rejected or that final notification has been issued confirming the proposed restriction on the construction activity up to a distance of 200 metres from Kondapalli Fort. Therefore, the writ petition has to be treated as premature and is liable to be dismissed as such. This view of ours is based on the judgments of the Supreme Court in **Chanan Singh v. Registrar, Coop. Societies**[1], **Dr.G. Sarana v. University of Lucknow**[2], **Kunda S. Kadam v. Dr.K.K.Soman**[3], **State of U.P. v. Brahm Datt Sharma**[4], **Executive Engineer, B.S.H.B. v. Ramesh Kumar Singh**[5], **Union of India v. Metal Box Co. of India Ltd.**[6], **A.K. Singh v. Uttarakhand Jan Morcha**[7], **Ulagappa v. Divisional Commr., Mysore**[8], **GKN Driveshafts (India) Ltd. v. Income Tax Officer**[9] and **Bhaiji v. Sub-Divisional Officer, Thandla**[10].

Before concluding, we deem it proper to mention that the petitioner has not questioned the legality of communication dated 5-12-2003 sent by the Director of Archeology and Museums Department to the Vice-Chairman of the Authority with the request that no permission be given for construction of houses within 200 metres from

the prohibited area. Therefore, no effective relief can be given to the members of the petitioner association.

In the result, the writ petition is dismissed. However, liberty is given to the members of the petitioner to file writ petition or avail other appropriate legal remedy after the issue of final notification.

As a sequel to dismissal of the writ petition, WPMP No.9086 of 2007 filed by the petitioner for interim relief and WPMP No.9087 of 2007 filed for issue of a direction to respondent Nos.1 and 2 to call for the records pertaining to Gazette Notification dated 20-5-2004 are disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

09.04. 2007

svs

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[1] (1976) 3 SCC 361

[2] (1976) 3 SCC 585

[3] (1980) 2 SCC 355

[4] (1987) 2 SCC 179

[5] (1996) 1 SCC 327

[6] (1996) 11 SCC 122

[7] (1999) 4 SCC 476

[8] (2001) 10 SCC 639

[9] (2003) 1 SCC 72

[10] (2003) 1 SCC 692